REMARKS

The Non Final Office Action mailed October 1, 2009 has been reviewed and carefully considered. Reconsideration of the above-identified application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 1-22 are pending in this application. The claims have been presented herewith for the Examiner's convenience. No amendments have been made and no new matter has been added.

§101 REJECTIONS

Claim 21 was rejected under 35 U.S.C. 101 as claiming subject matter that is directed towards a signal per se. The specification was cited as indicating that the claimed computer readable storage medium can be a signal (see pg. 16, lines 5-16).

Applicants respectfully disagree with the 101 rejection.

The specification on page 16, lines 8-13 recites:

"Any of the above may be embodied on a computer readable medium, which includes storage devices and signals, in compressed or uncompressed form. Exemplary computer readable storage devices include conventional computer system RAM (random access memory), ROM (read only memory), EPROM (erasable, programmable ROM), EEPROM (electrically erasable, programmable ROM), flash memory, and magnetic or optical disks or tapes."

Thus, Applicants' specification discloses various tangible examples (e.g., a random access memory, magnetic or optical disks or tapes, etc.) See specification, page 16, lines 8-18.

Claim 21 recites:

21. A computer readable storage device storing code, which when executed by a processor, for performing the method of claim 12.

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Note that Claim 21 is clearly directed to a 'computer readable storage device' not a 'computer readable storage medium.'

Claim 21, in reciting a computer readable storage device storing code, is directed to tangible media, and is thus statutory subject matter under Section 101.

In support of the above, Applicants provide herewith the following excerpt from a Board of Patent Appeals and Interferences decision decided on July 10, 2009 regarding a Section 101 rejection:

> "The Examiner explained the basis for the rejection as follows: The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the mean[ing] of 35 USC §101. They are clearly not a series of steps or acts to be a process no[r] are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*. These claims recite that logic is stored on a computer-readable medium, which is defined on page 18 of the specification to include any means to store, communicate, *propagate*, or transport its contents such as an electrical connection. Claims 21-23 are non-statutory because the definition of "computer-readable medium" includes non-statutory subject matter.
>
> The Examiner's mention of Appellants' disclosed "**propagation** medium" example suggests that the Examiner has concluded that claim 21 is broad enough to read on the disclosed **propagation** medium, which under *In re Nuijten* does not constitute patentable subject matter under § 101. We do not agree that claim 21 is so broad. In our view, the language "stored on computer-readable media" limits claim 21 to tangible media, with the result that claim 21 recites an article of manufacture and thus constitutes patent eligible subject matter under § 101.
>
> The § 101 rejection of claims 21-23 is therefore reversed."
>
> See Ex Parte Shell S. Simpson and Ward S. Foster 2009 WL 2046494 (Bd. Pat. App. & Interf.) Appeal 2008-004390

Accordingly, withdrawal of the 101 rejection is respectfully requested.

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§103 REJECTIONS

Claims 1-2, 4-7, 12-14, 19 and 21-22 were rejected under 35 USC 103(a) as being

unpatentable over Fujisawa (US Pat No 7,352,726) in view of Skarica et al. (US Pat No

7,171,121, hereinafter Skarica) in view of U.S. Patent No. 6,496,862 to Akatsu et al.

(hereinafter Akatsu) in view of WO01/074096 to Pathak et al. (hereinafter Pathak).

Applicants submit that for at least the reasons discussed below claims 1-2, 4-7,

12-14, 19 and 21-22 are patentably distinguishable over the teachings of the suggested

combination of references.

On page 5 of the Office action, the Examiner admits that Fujisawa and Skarica do

not disclose determining a priority code associated with the data packet and determining

whether to open a channel comprising an isochronous channel or an asynchronous

channel. The Examiner cites Akatsu as now allegedly disclosing this feature.

Furthermore, the Examiner concedes on page 5-6 of the Office Action that

Fujisawa, Skarica and Akatsu are silent with regards to establishing a channel in response

to a detected presence of the priority code for communicating information in said stream

of packet based digital data to a second communications network, the second

communications network having a communications protocol that allows for set up and

communications over discrete channels of a reserved bandwidth. Firstly, it is noted that

the last line on page 5 of the Office Action incorrectly states: "...**the stream of packets**

based on digital data..." when in fact, what is presently claimed recites: "...**said stream**

of packet based digital data..." The Examiner refers to Pathak as allegedly curing the

deficiencies of Fujisawa, Skarica and Akatsu.

The Applicants believe this rejection is improper for at least the following reasons.

Firstly, it is again asserted that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." *KSR*, 127 S.Ct. at 1741; *see also Grain Processing Corp. v. Am. Maize-Prods. Co.*, 840 F.2d 902, 907 (Fed.Cir.1988)

It appears that Fujisawa was cited by the Examiner for the feature of showing both an Ethernet network and an IEEE 1394 network (see FIG. 1). However, Fujisawa simply teaches a communication method for connecting two different networks to form a single network without wasting MAC addresses. Fujisawa is concerned with a communication device adapted to prepare a physical address on the basis of the theoretical address of the first terminal connected to a first network or that of the second terminal connected to a second network as stored in the received packet. As such, in Fujisawa it is no longer necessary to constantly hold a large number of physical addresses that may be simply wasted.

However, Fujisawa is silent with respect to any concern or methodology for providing a connection between prioritized (an Ethernet) and parameterized networks in view of a particular Quality of Service. In particular, Fujisawa fails to disclose or suggest at least receiving a stream of packet based digital data from a first communications network having a prioritized communications protocol, determining a priority code associated with a data packet of said stream, determining whether to open a channel comprising an isochronous channel or an asynchronous channel in response to the priority code, and using the presence of the priority code as an indication for setting up

the channel for communicating information in said stream of packet based digital data to a second communications network, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth, essentially as presently claimed.

Skarica was cited as disclosing that a first communications network has a prioritized communications protocol. However, while Skarica does discuss wherein its technique relates to network comprising an Ethernet connection, Skarica simply relates to providing a optical signal to a destination (all via Ethernet) and does NOT at all involve transferring packet based digital data between a prioritized communication network and a network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth (a parameterized communications network), as presently claimed. Therefore, there would be no motivation whatsoever for one skilled in the art to combine Skarica with Fujisawa, and furthermore, such combination would be unworkable as their objectives and systems are wholly unrelated.

Akatsu relates to a method for remote monitoring and control of device nodes in a network system, namely a home entertainment system. The Examiner cites Col. 9, lines 40-53 of Akatsu, which recites:

"At act 2316 a test is performed to determine whether the data packet contains real time or non-real time data. For example, a command is likely non-real time data. However, an MPEG transport stream is real time data. By analyzing the data packet header, the home gateway 504 can determine the type of data contained in the data packet. If the data packet body contains non-real time data, then processing continues to act 2320, where the data packet body is prepared for transmission as an asynchronous packet on the IEEE 1394 bus. On the other hand, if the data packet body comprises real time data, than processing continues to act 2324, where the data packet body is prepared for transmission over an isochronous channel of the IEEE 1394 bus. Acts 2320 and 2324 both continue to act 2328."

However, Akatsu involves formatting and routing data between an external network (which is disclosed as comprising an MPEG network and IP network – *See* Col. 10, lines 8-10) and an internal network (which is disclosed as being an IEEE 1394 bus). Thus, the system of Akatsu is wholly unrelated to and does not teach or suggest communicating between a first network having a prioritized communications protocol and a second network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth (parameterized network).

Accordingly, one skilled in the art would not contemplate combining Akatsu with Fukisawa.

Even if Akatsu could be combined with Fujisawa and/or Skarica, such combination would still fall short of the claims. Note that the cited excerpt of Akatsu simply refers to analyzing a data packet header in a packet received by a home gateway (i.e., ATM packets from the external network). The home gateway converts data and signals from the external network from ATM packets to an IEEE 1394 format. See Col. 10, lines 15-19. The outcome of the analysis determines whether to transmit the packet as an asynchronous packet on the IEEE 1394 bus, or transmit the packet over an isochronous channel of the IEEE 1394 bus.

However, the conversion of ATM packets to an IEEE 1394 format, as in Akatsu, bears no relation to transferring packet based data from a prioritized network to a second network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth (parameterized network), essentially as presently claimed.

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Finally, Pathak involves a system and method for providing local loop

telecommunications services through a wireless media, and namely, for providing such

services for data and voice to provide efficient usage of available shared radio resources.

However, Pathak's method is applicable to, and is taught only with respect to,

communication between a base station and subscriber stations, and is not related to

communication between separate networks, much less communication between a first

network having a prioritized communication protocol and a second network which allows

reservation of network resources, as in the present invention. Indeed, Pathak recites:

> "The SUC in each subscriber station communicates with a network utilization
> manager (NUM) to request network resources from the base station. The NUM
> determines the requirements, in data transmission capacity and/or QoS levels, for
> the desired connection and considers the utilizxation of the network resources at
> the base station, or sector of the base station, in determining whether to establish
> the desired connection."

See Pathak, Abstract.

Pathak's method involves connections between a base station and subscriber

stations via a wireless network, and bears no relation to communication amongst

heterogeneous networks (e.g., between Ethernet based devices and wireless devices) as in

the present invention. Thus, Pathak's system and method is inapplicable to the presently

claimed invention, and cannot and would not be properly combined with the Fujisawa

reference. Further, even if combined (and even if the remaining references of Skarica

and Akatsu could also be combined therewith) the combination would be unworkable due

in part to the widely divergent nature of these references' objectives and problems to be

solved.

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To reiterate, in summary, note that Fujisawa involves a communication method

that can connect two different networks to form a single network without wasting MAC

addresses, Skarica involves a technique for providing an optical signal to a destination,

Akatsu involves formatting and routing data between an external network (which is

disclosed as comprising an MPEG network and IP network) and an internal network

(which is disclosed as being an IEEE 1394 bus), and Pathak involves a WLL system for

managing radio data transmission capacity and network resources shared by a plurality of

subscriber stations.

Nevertheless, assuming *arguendo*, that Pathak could be properly combined with

the cited references, the combination fails to arrive at the presently claimed invention.

Pathak discloses a base station determining and allocating network resources and

establishing connections with subscriber stations accordingly. Pathak is concerned with

making connections within a *single* type of network between a base station and

subscriber stations if the resources are available. Any alleged type of 'priority code'

which is suggested as being taught in Pathak refer to parameters of the actual resources

the proposed connection requires or deserves to determine whether to allocate network

and radio resources to establish the connection:

> "When NUM 224 wishes to establish a connection to a subscriber station 32, it
> determines the necessary resource requirements for the connection. When
> subscriber station 32 wishes to initiate a connection, it contacts base station 24 to
> forward a request to NUM 224. In either case, NUM 224 is informed of or
> determines the type of connection desired and NUM 224 considers the actual
> resources the proposed connection requires or desires."

See Pathak, page 13, line 30 to page 14, line 2.

However, this is to be distinguished from determining and establishing distinct

types of channels for communication between two different types of networks, based on a

priority code, as in the present invention. Indeed, in Pathak, there is no need for establishing distinct channels of any kind since the communications are being performed and connections are being established within a homozygous network. Namely, Fujisawa, Skarica, Akatsu and/or Pathak fail to disclose or suggest at least receiving a stream of packet based digital data from the first communications network having a prioritized communications protocol; determining a priority code associated with a data packet of said stream; determining whether to open a channel comprising an isochronous channel or an asynchronous channel in response to the priority code; and using the presence of the priority code as an indication for setting up the channel for communicating information in said stream of packet based digital data to a second communications network, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth, essentially as claimed in the independent claims 1, 5, 12 and 22.

Therefore, it is respectfully asserted that independent Claims 1, 5, 12 and 22 are patentably distinct and non-obvious over Fujisawa, Skarica, Akatsu and/or Pathak for at least the reasons set forth above. Claims 2, 4, 6-7, 13-14, 19 and 21 each depend from one of claims 1, 12, 12 and 22. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1, 5, 12 and 22.

Claims 3, 10 and 16 were rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak and further in view of Brewer (6,657,999). Claims 8 and 15 rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak as

applied to claims 5 and 12 above, and further in view of Walke et al. (US 7,016,676, hereinafter Walke). Claims 9 and 20 were rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak and further in view of Lemieux et al. (U.S. 6,968,374).

Claim 11 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak as applied to claim 5 above, and further in view of Hamamoto et al. (6,038,233, hereinafter Hamamoto). Claim 17 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak as applied to claim 12 above, and further in view of RFC 0793 (Transmission Control Protocol – Sept. 1981). Claim 18 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Akatsu in view of Pathak as applied to claim 12 above, and further in view of Naudus (US 2002/0016837).

The rejection of claims 3, 8-10, 11, 15-18 and 20 is based, in part, on the contention that Fujisawa, Skarica, Akatsu and/or Pathak disclose or suggest the features of claims 1, 5, 12 and 22 from which such claims depend. However, in light of the above arguments with respect to claim 1, it is clear that the combination of Brewer, Walke, Lemieux, Hamamoto, RFC 0793, and/or Naudus with Fujisawa, Skarica, Akatsu and/or Pathak is legally deficient, since, at the very least, as explained above, neither Fujisawa, Skarica, Akatsu and/or Pathak disclose or suggest the features of claims 1, 5 and 12 from which claims 3, 8-10, 11, 15-18 and 20 depend.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1-22 are

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believed to be in condition for allowance for at least the reasons stated above. Early and

favorable reconsideration of the case is respectfully requested.

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CONCLUSION

In view of the foregoing, Applicants respectfully request that the rejections of the claims set forth in the Non Final Office Action mailed October 1, 2009 be withdrawn, that pending Claims 1-22 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicants' representative's Deposit Account No. 07-0832.

Respectfully submitted,
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